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Attorneys for Court-Appointed Monitor,
11 *Thomas W. McNamara*

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 AMG SERVICES, INC., et al.,

18 Defendants, and

19 PARK 269 LLC, et al.,

20 Relief Defendants.
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Case No. 2:12-cv-00536-GMN-VCF

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
SUNWAY HOTEL GROUP, INC.;
SUNWAY HOTEL MANAGEMENT, INC.;
BARTLESVILLE SW HOTEL, INC.;
BARTLESVILLE HOTEL, LLC; AND
BARTLESVILLE HOTEL DEC, LLC**

1 The Court-appointed monitor Thomas W. McNamara (the “Monitor”) and non-parties
2 Sunway Hotel Group, Inc.; Sunway Hotel Management, Inc.; Bartlesville SW Hotel, Inc.;
3 Bartlesville Hotel, LLC; and Bartlesville Hotel DEC, LLC (collectively, the “Sunway Parties”)
4 jointly move the Court to approve the proposed Settlement Agreement, attached hereto as
5 Exhibit 1, relating to interests in a hotel in Bartlesville, Oklahoma (the “Bartlesville Hotel”).

6 The Sunway Parties operate and manage the Bartlesville Hotel. Scott Tucker and certain
7 Monitor Entities obtained economic and ownership interests in the Bartlesville Hotel in 2013, as
8 the result of the settlement of a dispute between Mr. Tucker and the Sunway Parties. The
9 Monitor contends Sunway Hotel Management, Inc. paid itself excessive fees in operating and
10 managing the hotel to the detriment of Mr. Tucker and Monitor Entities. The Monitor has
11 engaged in extensive pre-litigation settlement discussions with the Sunway Parties resulting in
12 the proposed Settlement Agreement attached as Exhibit 1. Provided the Court approves the
13 Settlement Agreement, the Sunway Parties will pay \$425,000 to the Monitor in exchange for
14 resolving any disputes regarding the management of the Bartlesville Hotel and transferring all of
15 the Monitorship Estate’s interest in the hotel to the Sunway Parties.

16 The Plaintiff in this case, the Federal Trade Commission, has been provided the proposed
17 Settlement Agreement and does not oppose this motion. Scott Tucker is unrepresented in this
18 case and is presently incarcerated.¹

19 If the Court is satisfied with the Settlement Agreement, the Monitor and the Sunway
20 Parties ask for an order approving the Settlement Agreement and that the Court retain
21 jurisdiction to interpret and enforce the agreement. If the Court wishes to further inquire about
22 the matter prior to issuing an order, the Monitor asks that the Court set this motion for a hearing
23 or otherwise instruct the Monitor to file a report as to any issue where further information is
24 needed.

25 ¹ Counsel for defendants Scott Tucker, AMG Capital Management, LLC, Level 5 Motorsports,
26 LLC, Black Creek Capital Corporation, and Broadmoor Capital Partners (collectively, “Tucker
27 Defendants”) has withdrawn from the representation. As a result of his criminal conviction in
28 the Southern District of New York, Mr. Tucker was sentenced to prison and remanded to
custody. Having previously inquired of counsel, we believe Mr. Tucker is not presently
represented in this action, and therefore we intend to serve this motion directly on him. We shall
send Mr. Tucker a copy of this motion via mail at his present Bureau of Prisons facility.

1 Accordingly, the Monitor and the Sunway Parties hereby jointly ask that the Court issue
2 an order approving the Settlement Agreement.

3 Dated: January 17, 2020

4 Respectfully submitted by:

5
6 /s/ Edward Chang

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Thomas W. McNamara*

/s/ Michael B. Shteamer

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*Attorneys for Sunway Hotel Group, Inc.,
Sunway Hotel Management, Inc., Bartlesville
SW Hotel, Inc., Bartlesville Hotel LLC, and
Bartlesville Hotel DEC, LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th day of January, 2020, pursuant to Fed. R. Civ. P. 5(b), I
3 served via CM/ECF or delivered by email and mailing in the U.S. Mail a true and correct copy of
4 the foregoing **JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT WITH
SUNWAY HOTEL GROUP, INC.; SUNWAY HOTEL MANAGEMENT, INC.;
BARTLESVILLE SW HOTEL, INC.; BARTLESVILLE HOTEL, LLC; AND
BARTLESVILLE HOTEL DEC, LLC**, postage prepaid and addressed to the following:

5 **VIA CM/ECF**

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12 *Attorneys for FTC*

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Partners, LLC; Scott A. Tucker; Park 269 LLC*

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/s/ Edward Chang

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Thomas W. McNamara*

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VIA U.S. MAIL

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EXHIBIT 1

Settlement Agreement and Release of Claims

EXHIBIT 1

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the “Agreement”) is made and entered into by and between: (1) Bartlesville Hotel, LLC (“Bartlesville Hotel”), Bartlesville SW Hotel, Inc. (“Bartlesville SW Hotel”), Bartlesville DEC, LLC (“Bartlesville DEC”), Sunway Hotel Group, Inc. (“Sunway Hotel Group”), and Sunway Hotel Management, Inc. (“Sunway Hotel Management”) (collectively the “Sunway Parties”); and (2) Thomas W. McNamara, in his capacity as a Court-appointed monitor in the below-defined Litigation (the “Monitor”). For the purposes of this Agreement, the Sunway Parties and the Monitor are each referred to individually as a “Party” and collectively as the “Parties.”

R E C I T A L S

A. Whereas, on or about April 2, 2012, the Federal Trade Commission filed suit in litigation entitled *Federal Trade Commission v. AMG Services, Inc., et al.*, D. Nev. Case No. 2:12-cv-00536-GMN-VCF (the “Litigation”);

B. Whereas, the court hearing the Litigation is referred to herein as the “Court”;

C. Whereas, the Monitor was appointed as Monitor over the Monitorship Estate pursuant to the Order Appointing Monitor and Freezing Assets, ECF No. 1099 (“Order Appointing Monitor”);

D. Whereas, the estates of the Monitorship Estate constitutes all of Scott Tucker’s, Kim Tucker’s and the Monitor Entities’ Assets, wherever they may be located, in whosever possession they may be found, whether owned directly or indirectly, except as excluded in the Order Appointing Monitor (collectively, the “Monitorship Estate”);

E. Whereas, the entities subject to the monitorship include AMG Capital Management, LLC, Level 5 Motorsports, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Park 269, LLC, BA Services LLC, C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC, Impact BP LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC, Level 5 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service), PSB Services LLC, Real Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST Capital LLC, Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of Trust, dated February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC and their successors, assigns, affiliates, and subsidiaries (“Monitor Entities”);

F. Whereas, the terms “Asset” or “Assets” as used herein means assets disclosed in each “Federal Trade Commission Financial Statement of Individual Defendant” or “Federal Trade Commission Financial Statement of Corporate Defendant” of Scott A. Tucker, AMG Capital Management, LLC, Level 5 Motorsports, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Kim Tucker, and Park 259, LLC, any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property wherever located, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds,

contracts, mail or other deliveries, shares of stock, futures, securities, partnership interests, inventory, checks, notes, accounts, credits, receivables, cash or currency, trusts, including but not limited to asset protection trusts and trusts held for the benefit of a Defendant, and reserve funds or other accounts associated with any payments processed on behalf of any Defendant, including, but not limited to, such reserve funds held by a payment processor, credit card processor, or bank, regardless of when any Defendant acquired such interest, right, or claim;

G. Whereas, on November 30, 2013, Bartlesville DEC, LLC, Donald E. Culbertson, The DEC Trust UTA January 23, 2012, and Donald E. Culbertson Revocable Trust UTA January 1, 1998, as amended (collectively, "Assignors") each executed an Assignment of Economic Interest in favor of Westfund LLC transferring certain profits and distributable earnings of Bartlesville Hotel, LLC to Westfund LLC;

H. Whereas, on June 10, 2010, Bartlesville Hotel, LLC and Bartlesville SW Hotel, Inc. entered a Day-to-Day Management Agreement and Bartlesville SW Hotel, Inc. and Sunway Hotel Management, Inc. entered a Day-to-Day Management Agreement (collectively, "Management Agreements") for the Hilton Garden Inn located in Bartlesville, Oklahoma (the "Property");

I. Whereas, the Management Agreements required, among other things, management fees payable to Sunway Hotel Management, Inc. to "[s]upervise and manage" the Property in exchange for compensation of 5% of Gross Income (with a minimum of \$5,000 per month), reimbursement of out-of-pocket expenses, and an accounting fee of \$2,500 per month;

J. Whereas, beginning in October 2013, Sunway Hotel Management, Inc. paid itself a "restaurant/bar oversight fee" of \$6,100 per month and received a total of \$274,500 from October 2013 to July 2017;

K. Whereas, the Monitor contends that the \$274,500 that Sunway Hotel Management, Inc. paid itself for the "restaurant/bar oversight fees" were duties it was already required to perform and the \$274,500 should have been distributed to Westfund LLC pursuant to the Assignors' Assignment of Economic Interest (the "Sunway Dispute"), which Sunway Hotel Management, Inc. disputes;

L. Whereas, between August 2008 and October 2010, Scott Tucker, Oro Valley Hotel Holdings, LLC, an entity owned by Scott Tucker, Westfund LLC and Black Creek Capital Corporation invested in the Property and in addition in two hotel developments, Forum Express located in Florida and Oro Valley located in Arizona, with Donald E. Culbertson, Sunway Hotel Group, Inc., Sunway Hotel Management, Inc., Oro Valley Sunway, LLC, Oro Valley DEC, LLC, Oro I SW Hotel, Inc., Forum Express, LLC, and Forum SW Hotel, Inc. that were not completed (collectively the "Hotel Projects");

M. Whereas, Bartlesville DEC (assignee of the Donald E. Culbertson Trust UTA January 1, 1998) and Bartlesville Hotel Holdings, LLC, a Nevada limited liability company ("Bartlesville Holdings") which is an Asset of the Monitorship Estate are the sole members of Bartlesville Hotel and each of those members entered into the Second Amended and Restated Operating Agreement of Bartlesville Hotel, LLC which entity owns the Property; and

N. Whereas, the Parties engaged in settlement discussions and now desire to avoid the risk, inconvenience, and expense of litigation; the Parties have therefore agreed to fully and fairly resolve the Sunway Dispute, any disputes regarding the Hotel Projects or the Property, and any dispute regarding Bartlesville Holdings (hereinafter collectively referred to as the “Released Claims”) that the Parties had in the past against each other arising prior to the Effective Date hereof.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises, covenants, and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Recitals

The aforementioned Recitals are incorporated into this Agreement as if set forth fully herein.

2. Submission to the Court

The Parties shall submit this Agreement for Court approval after execution by all parties by submitting the Joint Motion and Proposed Order attached hereto as Exhibit A. In the event that the court denies approval of this Agreement, the Agreement shall be null and void. In the event the Court approves the Agreement, the date of such approval shall be the “Effective Date.”

3. The Settlement

a. The Sunway Parties shall pay to the Monitor a total of \$425,000 no later than seven business days after the Effective Date; and

b. The Monitor shall assign the Economic Interest currently held by Westfund to the Sunway Parties no later than seven business days after the Effective Date by executing the Omnibus Assignment attached hereto as Exhibit B. Further, Monitor shall assign the fifty-five percent (55%) membership interest of Bartlesville Holdings to Bartlesville DEC no later than seven (7) business days after the Effective Date by executing the Omnibus Assignment attached hereto as Exhibit C.

4. Mutual General Release and Waiver

a. As of the Effective Date, the Monitor, on behalf of the Monitor Entities and the Monitorship Estate, hereby agrees to release and forever discharge the Sunway Parties and their attorneys from all liabilities, causes of action, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys’ fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever, whether known or unknown, whether presently existing or arising in the future, whether suspected or unsuspected, whether fixed or contingent,

Settlement Agreement
Sunway Parties
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including those arising under any theory of law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether in law or in equity, which they had or may claim to have against any of them, including, without limitation, those arising out of or relating to: (i) the Sunway Dispute; (ii) the Hotel Projects; (iii) the Released Claims; (iv) any other matters between the Sunway Parties and the Monitorship Estate and/or the Monitor Entities; and/or (v) any costs, attorneys' fees or expenses incurred in connection with the subject matter hereof prior to the Effective Date (collectively, the "Monitor Released Claims").

b. As of the Effective Date, the provisions of which survive this general release and waiver, the Sunway Parties hereby agree to release and forever discharge the Monitor, the Monitorship Estate, the Monitor Entities and their attorneys from all liabilities, causes of action, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys' fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever, whether known or unknown, whether presently existing or arising in the future, whether suspected or unsuspected, whether fixed or contingent, including those arising under any theory of law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether in law or in equity, which they had or may claim to have against any of them, including, without limitation, those arising out of or relating to: (i) the Sunway Dispute; (ii) the Hotel Projects; (iii) the Released Claims; (iv) any other matters between the Sunway Parties and the Monitorship Estate; and/or (v) any costs, attorneys' fees or expenses incurred in connection with the subject matter hereof prior to the Effective Date (collectively, the "Sunway Released Claims").

c. As of the Effective Date, and except as expressly set forth in this Agreement, the Parties hereby expressly and knowingly waive and relinquish any and all rights that they have or might have relating to the Monitor Released Claims and/or the Sunway Released Claims under California Civil Code § 1542 (and under other statutes or common-law principles of similar effect) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

d. Notwithstanding any other provision herein, the releases stated herein shall not include any claims by any Party against any other person or entity not expressly identified in the releases.

5. Representations and Warranties

a. The Sunway Parties represent and warrant to the Monitor that the Sunway Parties' documents and information provided to the Monitor prior to the Effective Date were, taken as a

whole in all material respects true, accurate, correct, and complete at the time such disclosures were made. The Sunway Parties further represent and warrant to the Monitor that they are not currently in possession or control of any monies or funds attributable to Monitor Entities and the Hotel Projects (except for the Property) are no longer active and were terminated before November 30, 2013.

b. If the Court finds that the Sunway Parties committed a material misrepresentation or omission, it is agreed that, notwithstanding the releases stated in Paragraph 4, and notwithstanding any other provision of this Agreement, the Monitor may request that the Court hold the Sunway Parties in civil contempt. Should the Monitor make such a request, and should the Court determine that such a material misrepresentation or omission was made, the Court shall enter a finding of civil contempt against the Sunway Parties in favor of the Monitor.

6. No Admission of Fault or Liability

It is understood and agreed that this Agreement and the performance of other obligations herein are for the sole purpose of compromising the Monitor Released Claims and the Sunway Released Claims, and that this Agreement (including any acknowledgments in the above recitals), shall not be construed as an admission of liability or an acknowledgement of facts by any Party, with liability being expressly denied by each Party.

7. Integration Clause

This Agreement contains the entire agreement of the Parties and supersedes any and all prior, written or oral, agreements among them concerning the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

8. Consultation with Counsel

The Parties represent and warrant that they have had an opportunity to present counsel of their choice with this Agreement, that, if they elected to have counsel, such counsel has had the opportunity to review this Agreement, and that they are executing this Agreement of their own free will after having received advice from counsel regarding execution of this Agreement or after having had the opportunity to seek such advice.

9. Choice of Law, Consent to Jurisdiction, and Venue

This Agreement shall be governed by and interpreted and construed pursuant to the laws of the State of Nevada, without giving effect to any conflicts of law principle. In the event of a dispute regarding this Agreement, the Parties hereby consent to the exclusive jurisdiction and venue of the U.S. District Court for the District of Nevada, and specifically the Court having jurisdiction over the Litigation, which jurisdiction shall survive termination of the Litigation.

10. Attorneys' Fees

In the event that any action or other proceeding is taken to enforce the terms of this Agreement, the prevailing party shall be entitled to recover, in addition to other damages or remedies, its reasonable attorneys' fees, court costs, and other costs and expenses reasonably incurred in connection therewith, including but not limited to any reasonable attorneys' fees, court costs and other costs and expenses incurred in connection with seeking to recover the attorneys' fees, court costs and other costs and expenses of enforcement provided for by this paragraph.

11. Severability

If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then: (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable shall be unaffected; (ii) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformance with the Parties' intent as manifested herein; and (iv) if the ruling and/or the controlling principle of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislature, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

12. No Waiver

The failure of any Party to insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment by such Party of any other provision of this Agreement.

13. Modification and Amendment

This Agreement may not be waived, altered, amended or repealed, in whole or in part, except upon written agreement executed by the Party or Parties against which enforcement is sought.

14. Agreement Obligates, Extends, and Inures

The provisions of this Agreement shall be binding upon each of the Parties and each of the Parties' partners, affiliates, agents, principals, members, shareholders, managers, officers, employees, parents, subsidiaries, directors, trustees, successors, assigns, attorneys and, if any, and upon those who may assume any or all of the above described capacities subsequent to the Effective Date. The provisions of this Agreement shall inure to the benefit of each of the Parties and each of the Parties' partners, affiliates, agents, principals, members, shareholders, managers, officers, employees, parents, subsidiaries, directors, trustees, successors, assigns, attorneys and, if any, and upon those who may assume any or all of the above described capacities subsequent to

the Effective Date. The Monitor Entities are intended third party beneficiaries of the releases set forth in Paragraph 4(a) and 4(b) respectively. The Monitor hereby represents and warrants that upon the Court's approval of this Agreement, the Monitor has the requisite authority to bind the Monitorship Estate, the Monitor Entities and the Assets to this Agreement.

15. No Reliance

Each of the Parties represents and warrants that, except for the representations and warranties specifically set forth in this Agreement, in executing this Agreement, each Party does not rely, and has not relied, on any representation or statement made by any other Party to this Agreement, on any representation or statement made by anyone acting on behalf of any Party to this Agreement, or any representation or statement made by any other person.

16. No Assignment or Transfer of Action

Each Party represents and warrants that: (i) such Party owns the claims released hereby; (ii) no other person or entity has any interest in such claims; (iii) it has not sold, assigned, conveyed or otherwise transferred any such claim; and (iv) it has the sole right to settle and release such claims. The undersigned represent and warrant that to the best of their information and belief, and except as expressly set forth in this Agreement, they have no knowledge of any claims held by one against the other that are not released hereby.

17. Each Party to Bear Its Own Attorneys' Fees and Costs

Except as expressly provided for herein, each Party shall bear its own attorneys' fees and costs incurred in relation to this Agreement and any litigation and/or negotiations prior to the Effective Date.

18. Multiple Counterparts

This Agreement may be executed in counterparts, each of which may be executed and delivered via facsimile or PDF electronic delivery with the same validity as if it were an ink-signed document and each of which shall be effective and binding on the Parties as of the Effective Date. Each such counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one and the same Agreement.

19. Authority of Signatories

Each of the Parties to this Agreement represents and warrants that such Party is authorized to enter into this Agreement and that any required consents, authorizations or approvals have been obtained.

20. Construction

Each Party hereto has cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed against any Party on

the ground that said Party drafted this Agreement. This Agreement shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Nevada, in effect as of the Effective Date.

IN WITNESS WHEREOF the undersigned Parties do hereby execute this Agreement as of the Effective Date.

SUNWAY HOTEL GROUP, INC.

Karen A. Kindred
By:
Title: Trustee

SUNWAY HOTEL MANAGEMENT, INC.

Karen Kindred
By:
Title: Trustee

BARTLESVILLE SW HOTEL, INC.

Karen Kindred
By:
Title: Trustee

BARTLESVILLE HOTEL, LLC

Karen Kindred
By:
Title: Trustee

BARTLESVILLE HOTEL DEC, LLC

Karen Kindred

By:

Title: Trustee

BARTLESVILLE HOTEL HOLDINGS, LLC

By:
Title:

**THOMAS W. MCNAMARA, IN HIS CAPACITY AS THE COURT-
APPOINTED MONITOR IN THE LITIGATION (THE "MONITOR")**



Thomas W. McNamara

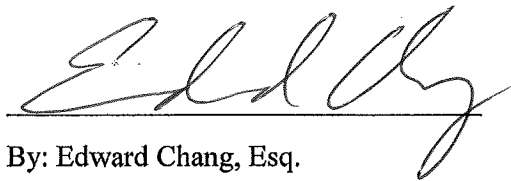
APPROVED AS TO FORM AND CONTENT:

POLSINELLI PC

By: Michael B. Shteamer, Esq.

Counsel for Sunway Hotel Group, Inc., Sunway Hotel Management, Inc.,
Bartlesville SW Hotel, Inc., Bartlesville Hotel, LLC, and Bartlesville
Hotel DEC, LLC

MCNAMARA SMITH LLP



By: Edward Chang, Esq.

Counsel for the Monitor

BARTLESVILLE HOTEL HOLDINGS, LLC

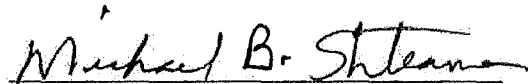
By:
Title:

**THOMAS W. MCNAMARA, IN HIS CAPACITY AS THE COURT-
APPOINTED MONITOR IN THE LITIGATION (THE "MONITOR")**

Thomas W. McNamara

APPROVED AS TO FORM AND CONTENT:

POLSINELLI PC



By: Michael B. Shteamer, Esq.

Counsel for Sunway Hotel Group, Inc., Sunway Hotel Management, Inc.,
Bartlesville SW Hotel, Inc., Bartlesville Hotel, LLC, and Bartlesville
Hotel DEC, LLC

MCNAMARA SMITH LLP

By: Edward Chang, Esq.
Counsel for the Monitor

EXHIBIT A

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Attorneys for Court-Appointed Monitor,
11 *Thomas W. McNamara*

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 AMG SERVICES, INC., et al.,

18 Defendants, and

19 PARK 269 LLC, et al.,

20 Relief Defendants.
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Case No. 2:12-cv-00536-GMN-VCF

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
SUNWAY HOTEL GROUP, INC.;
SUNWAY HOTEL MANAGEMENT, INC.;
BARTLESVILLE SW HOTEL, INC.;
BARTLESVILLE HOTEL, LLC; AND
BARTLESVILLE HOTEL DEC, LLC**

1 The Court-appointed monitor Thomas W. McNamara (the “Monitor”) and non-parties
2 Sunway Hotel Group, Inc.; Sunway Hotel Management, Inc.; Bartlesville SW Hotel, Inc.;
3 Bartlesville Hotel, LLC; and Bartlesville Hotel DEC, LLC (collectively, the “Sunway Parties”)
4 jointly move the Court to approve the proposed Settlement Agreement, attached hereto as
5 Exhibit 1, relating to interests in a hotel in Bartlesville, Oklahoma (the “Bartlesville Hotel”).

6 The Sunway Parties operate and manage the Bartlesville Hotel. Scott Tucker and certain
7 Monitor Entities obtained economic and ownership interests in the Bartlesville Hotel in 2013, as
8 the result of the settlement of a dispute between Mr. Tucker and the Sunway Parties. The
9 Monitor contends Sunway Hotel Management, Inc. paid itself excessive fees in operating and
10 managing the hotel to the detriment of Mr. Tucker and Monitor Entities. The Monitor has
11 engaged in extensive pre-litigation settlement discussions with the Sunway Parties resulting in
12 the proposed Settlement Agreement attached as Exhibit 1. Provided the Court approves the
13 Settlement Agreement, the Sunway Parties will pay \$425,000 to the Monitor in exchange for
14 resolving any disputes regarding the management of the Bartlesville Hotel and transferring all of
15 the Monitorship Estate’s interest in the hotel to the Sunway Parties.

16 The Plaintiff in this case, the Federal Trade Commission, has been provided the proposed
17 Settlement Agreement and does not oppose this motion. Scott Tucker is unrepresented in this
18 case and is presently incarcerated.¹

19 If the Court is satisfied with the Settlement Agreement, the Monitor and the Sunway
20 Parties ask for an order approving the Settlement Agreement and that the Court retain
21 jurisdiction to interpret and enforce the agreement. If the Court wishes to further inquire about
22 the matter prior to issuing an order, the Monitor asks that the Court set this motion for a hearing
23 or otherwise instruct the Monitor to file a report as to any issue where further information is
24 needed.

25 ¹ Counsel for defendants Scott Tucker, AMG Capital Management, LLC, Level 5 Motorsports,
26 LLC, Black Creek Capital Corporation, and Broadmoor Capital Partners (collectively, “Tucker
27 Defendants”) has withdrawn from the representation. As a result of his criminal conviction in
28 the Southern District of New York, Mr. Tucker was sentenced to prison and remanded to
custody. Having previously inquired of counsel, we believe Mr. Tucker is not presently
represented in this action, and therefore we intend to serve this motion directly on him. We shall
send Mr. Tucker a copy of this motion via mail at his present Bureau of Prisons facility.

Accordingly, the Monitor and the Sunway Parties hereby jointly ask that the Court issue an order approving the Settlement Agreement.

Dated: January 17, 2020

Respectfully submitted by:

/s/ Edward Chang

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*Attorneys for Sunway Hotel Group, Inc.,
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SW Hotel, Inc., Bartlesville Hotel LLC, and
Bartlesville Hotel DEC, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2020, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF or delivered by email and mailing in the U.S. Mail a true and correct copy of the foregoing **JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT WITH SUNWAY HOTEL GROUP, INC.; SUNWAY HOTEL MANAGEMENT, INC.; BARTLESVILLE SW HOTEL, INC.; BARTLESVILLE HOTEL, LLC; AND BARTLESVILLE HOTEL DEC, LLC**, postage prepaid and addressed to the following:

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/s/ Edward Chang

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Thomas W. McNamara*

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EXHIBIT B

EXHIBIT B**OMNIBUS ASSIGNMENT OF ECONOMIC INTEREST**

WESTFUND, LLC, a Nevada limited liability company, is the current owner and holder of certain Assignments of Economic Interest of Bartlesville Hotel, LLC, a Kansas limited liability company made by Bartlesville DEC, LLC, a Kansas limited liability company, Donald E. Culbertson, The DEC Trust UTA January 23, 2012, and Donald E. Culbertson Revocable Trust UTA January 1, 1998, as amended. The documents that evidence the Assignments of Economic Interest of Bartlesville Hotel, LLC (“Bartlesville Hotel”) include the documents described on **Exhibit A** attached hereto and incorporated herein by reference, being collectively referred to herein as the “**Economic Interest**”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **THOMAS W. MCNAMARA, IN HIS CAPACITY AS A COURT-APPOINTED MONITOR IN LITIGATION ENTITLED *FEDERAL TRADE COMMISSION V. AMG SERVICES, INC., ET AL.*, D. NEV. CASE NO. 2:12-CV-00536-GMN-VCF** (“**Assignor**”) does hereby grant, bargain, sell, assign, deliver, convey, transfer and set over unto Bartlesville DEC, LLC (“**Assignee**”), all of Assignor’s right, title and interest in and to the Economic Interest and obligations with respect to the Economic Interest, together with all rights, remedies, collateral, instruments or other documents made or granted in favor of Assignor in connection with the Economic Interest, including, without limitation: (i) the documents and instruments relating to the Economic Interest described on **Exhibit A** attached hereto and incorporated herein; and (ii) all other rights, remedies and obligations of Assignor in connection with Assignor’s ownership and/or interest in the Bartlesville Hotel including but not limited to the Economic Interest, whether provided by contract or otherwise available under applicable law or in equity.

This assignment is an agreement between the parties hereto and no other party shall be deemed to be a third party beneficiary hereof.

This assignment shall be governed by and interpreted and construed pursuant to the laws of the State of Nevada, without giving effect to any conflicts of law principle. In the event of a dispute regarding this assignment, Assignee and Assignor hereby consent to the exclusive jurisdiction and venue of the U.S. District Court for the District of Nevada, and specifically, the Court having jurisdiction over *Federal Trade Commission v. AMG Services, Inc., et al.*, D. Nev. Case No. 2:12-cv-00536-GMN-VCF, which jurisdiction shall survive termination of the litigation.

To have and to hold the same unto the Assignee and to the successors and assigns of the Assignee forever. Assignee agrees that the Economic Interest is subject to a pledge and security interest granted by BH Management, LLC, an Oklahoma limited liability company, in favor of First NBC Bank pursuant to a Collateral Pledge Agreement dated December 19, 2011, which pledge and security interest is now held by LNV Corporation as assignee of the Federal Deposit Insurance Corporation as Receiver for First NBC Bank.

Assignor represents and warrants to Assignee that: (i) Assignor is the holder and owner of the Economic Interest; and (ii) Assignor has all necessary power and authority to assign the Economic Interest and the undersigned is duly authorized to execute this Omnibus Assignment of Economic Interest on behalf of the Assignor.

IN WITNESS WHEREOF, this Omnibus Assignment of Economic Interest has been duly executed and sealed on behalf of Assignor as of the 14 day of June, 2020.

THOMAS W. MCNAMARA, IN HIS
CAPACITY AS A COURT-APPOINTED
MONITOR IN LITIGATION ENTITLED
FEDERAL TRADE COMMISSION V.
AMG SERVICES, INC., ET AL., D. NEV.
CASE NO. 2:12-CV-00536-GMN-VCF

By: 

IN WITNESS WHEREOF, this Omnibus Assignment of Economic Interest has been duly executed and sealed on behalf of Assignee as of the ____ day of _____, 2020.

BARTLESVILLE DEC, LLC

By: 

Title: Trustee

EXHIBIT A

SCHEDULE OF DOCUMENTS

1.	Assignment of Economic Interest, dated as of November 30, 2013, by Bartlesville Hotel DEC, LLC in favor of Westfund LLC
2.	Assignment of Economic Interest, dated as of November 30, 2013, by Donald E. Culbertson in favor of Westfund LLC
3.	Assignment of Economic Interest, dated as of November 30, 2013, by The DEC Trust UTA January 23, 2012 in favor of Westfund LLC
4.	Assignment of Economic Interest, dated as of November 30, 2013, by Donald E. Culbertson Revocable Trust UTA January 1, 1998, as amended in favor of Westfund LLC

EXHIBIT C

EXHIBIT C

**OMNIBUS ASSIGNMENT OF MEMBERSHIP
INTEREST OF BARTLESVILLE HOTEL HOLDINGS, LLC**

BARTLESVILLE HOTEL HOLDINGS, LLC (“**Bartlesville Hotel Holdings**”), a Nevada limited liability company, is the current owner and holder of a fifty-five percent (55%) membership interest in Bartlesville Hotel, LLC, a Kansas limited liability company, (being collectively referred to herein as the “**Membership Interest of Bartlesville Hotel Holdings**”) as more fully set forth in the Second Amended and Restated Operating Agreement of Bartlesville Hotel, LLC dated November 27, 2013.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **THOMAS W. MCNAMARA, IN HIS CAPACITY AS A COURT-APPOINTED MONITOR IN LITIGATION ENTITLED *FEDERAL TRADE COMMISSION V. AMG SERVICES, INC., ET AL.*, D. NEV. CASE NO. 2:12-CV-00536-GMN-VCF** (“**Assignor**”) does hereby grant, bargain, sell, assign, deliver, convey, transfer and set over unto Bartlesville DEC, LLC (“**Assignee**”), all of Assignor’s right, title and interest in and to the Membership Interest of Bartlesville Hotel Holdings, together with all rights, remedies, collateral, instruments or other documents made or granted in favor of Assignor in connection with the Membership Interest of Bartlesville Hotel Holdings, including, without limitation: (i) the documents and instruments relating to the Membership Interest of Bartlesville Hotel Holdings, described on **Exhibit A** attached hereto and incorporated herein; and (ii) all other rights, remedies and obligations of Assignor in connection with the Membership Interest of Bartlesville Hotel Holdings, whether provided by contract or otherwise available under applicable law or in equity.

This assignment is an agreement between the parties hereto and no other party shall be deemed to be a third party beneficiary hereof. This assignment shall effectively transfer and convey Bartlesville Hotel Holdings fifty-five percent (55%) membership interest in Bartlesville Hotel, LLC to Assignee.

This assignment shall be governed by and interpreted and construed pursuant to the laws of the State of Nevada, without giving effect to any conflicts of law principle. In the event of a dispute regarding this assignment, Assignee and Assignor hereby consent to the exclusive jurisdiction and venue of the U.S. District Court for the District of Nevada, and specifically, the Court having jurisdiction over *Federal Trade Commission v. AMG Services, Inc., et al.*, D. Nev. Case No. 2:12-cv-00536-GMN-VCF, which jurisdiction shall survive termination of the litigation.

To have and to hold the same unto the Assignee and to the successors and assigns of the Assignee forever. Assignee agrees that the Membership Interest of Bartlesville Hotel Holdings is subject to a pledge and security interest granted by BH Management, LLC, an Oklahoma limited liability company, in favor of First NBC Bank pursuant to a Collateral Pledge Agreement dated December 19, 2011, which pledge and security interest is now held by LNV Corporation as assignee of the Federal Deposit Insurance Corporation as Receiver for First NBC Bank.

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Assignor represents and warrants to Assignee that: (i) Assignor is the holder and owner of the Membership Interest of Bartlesville Hotel Holdings; and (ii) Assignor has all necessary power and authority to assign the Membership Interest of Bartlesville Hotel Holdings and the undersigned is duly authorized to execute this Omnibus Assignment of Membership Interest of Bartlesville Hotel Holdings on behalf of the Assignor.

IN WITNESS WHEREOF, this Omnibus Assignment of Membership Interest of Bartlesville Hotel Holdings has been duly executed and sealed on behalf of Assignor as of the 17th day of January, 2020.

THOMAS W. MCNAMARA, IN HIS
CAPACITY AS A COURT-APPOINTED
MONITOR IN LITIGATION ENTITLED
FEDERAL TRADE COMMISSION V.
AMG SERVICES, INC., ET AL., D. NEV.
CASE NO. 2:12-CV-00536-GMN-VCF

By: 

IN WITNESS WHEREOF, this Omnibus Assignment of Membership Interest of Bartlesville Hotel Holdings has been duly executed and sealed on behalf of Assignee as of the ____ day of _____, 2020.

BARTLESVILLE DEC, LLC

By: 

Name: KAREN KINDRED

Title: Trustee

EXHIBIT A

SCHEDULE OF DOCUMENTS

1.	Assignment of 55% Membership Interest of Bartlesville Hotel Holdings, LLC
2.	Second Amended and Restated Operating Agreement of Bartlesville Hotel, LLC, a Kansas limited liability company dated November 27, 2013

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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 FEDERAL TRADE COMMISSION,
12 Plaintiff,
13 v.
14 AMG SERVICES, INC., et al.,
15 Defendants, and
16 PARK 269 LLC, et al.,
17 Relief Defendants.

Case No. 2:12-cv-00536-GMN-VCF

**[PROPOSED] ORDER APPROVING
SETTLEMENT AGREEMENT BETWEEN
MONITOR AND SUNWAY HOTEL
GROUP, INC.; SUNWAY HOTEL
MANAGEMENT, INC.; BARTLESVILLE
SW HOTEL, INC.; BARTLESVILLE
HOTEL, LLC; AND BARTLESVILLE
HOTEL DEC, LLC**

18 Having reviewed the joint motion of the Court-appointed monitor Thomas W.
19 McNamara, and non-parties Sunway Hotel Group, Inc.; Sunway Hotel Management, Inc.;
20 Bartlesville SW Hotel, Inc.; Bartlesville Hotel, LLC; and Bartlesville Hotel DEC, LLC, the
21 Settlement Agreement attached to the joint motion, and for good cause shown,

22 **IT IS HEREBY ORDERED** that the Settlement Agreement is hereby APPROVED.
23 The Court shall retain jurisdiction over the interpretation and enforcement of the agreement.

24 **IT IS SO ORDERED.**

25 DATED this 16 day of March, 2020.

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27 
28 GLORIA M. NAVARRO
UNITED STATES DISTRICT JUDGE